



CITY OF MANCHESTER, NH
ZONING BOARD OF ADJUSTMENT
ONE CITY HALL PLAZA
MANCHESTER, NH 03101-2097
TEL: (603) 624-6475
FAX: (603) 624-6324
www.ManchesterNH.gov
e-mail: building@ManchesterNH.gov

GENERAL INFORMATION TO APPLICANTS ON THE MANCHESTER ZBA

Everyone has the right to appeal land use decisions through the Zoning Board of Adjustment. If you are considering such an appeal, you should be aware of the functions of the ZBA and the main issues that the ZBA is required by law to consider in reaching their decision. The Manchester Zoning Board of Adjustment is authorized by State Statute and established by Ordinance. The ZBA has the authority to act in separate and distinct categories, which are An **Appeal of the Administrative Decision** (Building Commissioner), a **Special Exception**, A **Variance**, an **Equitable Waiver of Dimensional Requirements**, an **Appeal of the Planning Board's Decision** as it relates to the Zoning Ordinance, an Appeal of the **Heritage Commission's Decision** and other appeals as set forth in the Zoning Ordinance of the City of Manchester, NH.

When an applicant is denied a building permit and considers an appeal to the ZBA, he/she must obtain the necessary paperwork as supplied by the Building Department. The completed paperwork, along with supportive documents is to be returned to that department. The Building Department would then review the plan whereupon the violations would be cited and a denial letter typed. The applicant will return to the Building Department to sign the denial letter and submit the required fee. Any deviation in the appeal application, plot plan or public testimony than what is presented to the Board could be a basis for denial.

The ZBA normally, with few exceptions, holds their public hearings and business meetings on the first Thursday of each month in the Aldermanic Chambers in City Hall beginning at 6:00 PM. These hearings are public, with all testimony and discussion recorded. Prior public notification to the applicant and the abutters is sent stating the place, date and time of the hearing. The cases are heard in the order that they are received in the department with a few exceptions made by the Chairman. The Board usually renders a decision upon sufficient testimony by all parties concerned.

The Board is required by law to consider a five-part test in the granting of a **Variance**. It is the responsibility of the petitioner to provide reasonable, factual proof so that each of the points is met. The first test is that there be no diminution in value to the surrounding property values by the granting of the variance. The second test is that the granting of the variance would not be contrary to the public interest. This test does not involve the interest of the petitioner but rather the public as a whole.

The third test is that the denial of the variance would result in unnecessary hardship. "Unnecessary hardship could be proven when a zoning restriction as applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment; no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property the variance would not injure the public or private rights of others." (Simplex vs Town of Newington, January 29, 2001).

The fourth test is that in granting the variance, Substantial Justice would be done. This test necessitates that the petitioner must prove that he/she has been treated unjustly by the law in some manner not born by the neighborhood as a whole. The fifth and final test states that by granting the variance, the use would not be contrary to the Spirit of the Ordinance. The intent of the legislative body that originally passed the Ordinance must be considered. They do this by lessening congestion in the streets, securing safety from fires, panic and other dangers and providing for adequate air and light.

A **Special Exception** is a use of the land or building that is permitted, subject to specific conditions set forth in the Ordinance. The site must be an appropriate location for the use or structure. The use will not adversely affect the neighborhood. There will be no nuisance or serious hazard to vehicles or pedestrians. Lastly, adequate and appropriate facilities are sufficient to insure proper operation of the proposed use, structure or condition.

An **Administrative Appeal** is an appeal from the written administrative decision involving interpretation or application of the Zoning Ordinance.

An **Equitable Waiver of Dimensional Requirements** shall be granted only from the physical layout, mathematical or dimensional requirements and not from use restrictions. The burden of proof on the property owner is to prove that a violation was discovered after the structure was substantially completed, an error was made in calculations, to correct it would outweigh any public benefit, it would not cause a public or private nuisance nor would it diminish surrounding property values. The owner may separately demonstrate that the violation existed for 10 years or more.

Cases before the ZBA may be tabled for additional information or for review and recommendation from other departments before a decision is rendered. The ZBA has the right to attach stipulations or conditions that must be adhered to; otherwise the Variance for Special Exception may be revoked. Notice of the Board's Decisions will be made available for public inspection within 72 hours. The Clerk will forward the approved Notice of Decisions to the Building Department, which will be given to the applicant when the building permit is secured. The denied Notice of Decisions will be mailed to the appellants.

When the Board grants the petitioner's request, the building permit must be obtained within one year, even if Planning Board action is required as well. If the building permit is not obtained, the variance will lapse.

Whether granted or denied, the petitioner, an abutter or any person aggrieved by the decision of the Board has 30 days (starting with the date of the decision) to request a rehearing. To be considered for a rehearing, the appeal must introduce new evidence that is to be considered or a change in circumstances that considerably alters the case. If the request for a rehearing is denied, the applicant has thirty (30) days to appeal to Superior Court.

Any petition that is considered to be a duplication of a prior decision of the Board is treated as a **Subsequent Application**. The Board will make the decision whether to hear the case if the applicant can sufficiently prove that the circumstances has changed or they have new evidence.

Additional information can be found in the City of Manchester Zoning Board of Adjustment's By-Laws and Rules for the Transaction of Business, which is available for viewing or can be purchased in the Building Department as well as being viewed on the city's website (www.ManchesterNH.gov)

The ZBA is committed to accessibility for people with disabilities. Please contact the office should you need a sign language interpreter, materials in an alternate format or other accommodations.

REQUIREMENTS FOR A VARIANCE

In addition to the Variance Questionnaire, the following information must be provided when applying for a variance:

1. 10 copies of a plot plan or site plan drawn to scale, showing lot, house, parking (8.5 x 18.5) 2 spaces per unit, setbacks, driveways, streets. (One original & 8 copies - NO Mylars)
2. 1 copy of the deed with description of lot. (Deed prior to 1965 if a new building or a subdivision.)
3. 1 copy of the tax map and a current property card which you may purchase from the Assessor's Office, located at One City Hall Plaza-West Wing, Manchester, NH 03101.
4. 10 copies of the floor plans, models or pictures of the proposal. Elevations are required for any new construction (including additions).
5. 1 signed affidavit from the owner **if you do not own the property.**
6. **If you are planning to erect a sign,** you must submit 10 copies of a sketch showing the dimensions that include the overall height and location on the site plan.

NOTE: You must apply for a variance **in person** in order to sign the Zoning brief.

NOTE: You need not be present at the Public Hearing to have your case decided upon.

NOTE: Fees are as follows:

- Application Fee - \$25
- Change of use - \$350
- Multi-use variance - \$350
- Planned developments - \$350
- Nonconforming subdivisions - \$350
- Unaccepted way - \$350
- All others (variances, special exceptions, administrative appeals, equitable waivers) - \$150
- Subsequent application - \$35.00

NOTE: In the event that the Board of Adjustment grants your appeal, you must then make application for a building permit through the Building Department in order to complete the process. This application must be made **within one year from the date the Board granted the variance.**

NOTE: The footings of all new buildings and additions shall be certified by a NH Registered Land Surveyor and a **copy of the survey submitted to the Building Department prior to commencing construction.**



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VARIANCE QUESTIONNAIRE

Complete this questionnaire and attach any supplemental material that would support your appeal.

Property Location: _____

Owner's Name: _____

Owner's Address: _____

Phone No. _____

Applicant: _____

Address _____

Phone No. _____

Section(s) or Article of the Zoning Ordinance in violation: _____

1. The proposed use would not diminish surrounding property values because: _____

2. Granting the variance would not be contrary to the public interest because: _____

3. Denial of the variance would result in unnecessary hardship to the owner because: _____

4. By granting the variance, substantial justice would be done because: _____

5. By granting the variance, the use would not be contrary to the Spirit of the Zoning Ordinance because: _____

Signature: _____

Date: _____



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SPECIAL EXCEPTION QUESTIONNAIRE

Complete this questionnaire and attach this page and any other supplemental material that would support your appeal.

Property location: _____

Owner's Name: _____

Owner's Address: _____

Phone No. _____

Agent's Name: _____

Agent's Address: _____

Phone No. _____

Section(s) or Article(s) of the Zoning Ordinance involved: _____

1. The specific site is an appropriate location for the use or structure because: _____

2. The use developed would not adversely affect the neighborhood because: _____

3. There would be no undue nuisance or serious hazard to vehicles or pedestrians because: _____

4. Adequate and appropriate facilities are sufficient to insure the proper operation of the proposed use, structure or condition: _____

Signature: _____

Date: _____



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AFFIDAVIT FORM

I, the undersigned, owner of the property at _____
hereby verify that I have authorized _____ to apply to the
Building Department of the City of Manchester, New Hampshire, for the following:

Signature of Owner _____

Address of Owner _____

Date _____